

October 11, 2018

Mr. Robert Brittain  
Frederick Ward Associates  
5 South Main Street  
Bel Air, Maryland 21014

Re: Fitch Property, Lori  
8918 Millers Island Boulevard  
Edgemere, Maryland 21219  
Critical Area Administrative Variance  
DEPS Tracking Number: 07-18-2771

Dear Mr. Brittain:

The Department of Environmental Protection and Sustainability (DEPS) has completed an evaluation of your variance request, which proposes to clear 8,226 square feet (sf) of forest (53.7%) in order to construct a new, single-family dwelling, driveway and associated yard on this 18,000 square foot (sf) property, which effectively joins two existing lots of record (lots 345 & 346), according to the plat of Swan Point, dated 1928. The property contains 15,320 sf of forest and a small portion of a non-tidal wetland buffer. Neither the wetland nor its buffer will be disturbed. The amount of forest clearing, being greater than 30% of the total forest on site, necessitates this variance request.

The subject non-waterfront property, located in the Edgemere/Millers Island section of Baltimore County, is within a Limited Development Area of the Chesapeake Bay Critical Area. It is bounded to the northeast by contiguous forest, to the northwest by single-family dwellings (of similar sizes to what is proposed) and Back River, to the southwest by forested areas of North Point State Park, and to the southeast by single-family dwellings and the Chesapeake Bay. The proposed Critical Area Easement (CAE) on site comprises approximately 7,900 sf (0.18 acre).

The Director of DEPS may grant a variance from the Chesapeake Bay Critical Area regulations in accordance with regulations adopted by the Critical Area Commission concerning variances as set forth in COMAR 27.01.11. There are five (5) criteria listed in COMAR 27.01.11 that shall be used to evaluate the variance request. All five of the criteria must be met in order to approve the variance.

The first criterion requires that special conditions exist that are peculiar to the land or structure, and that literal enforcement of the regulations would result in unwarranted hardship. Development of the property is constrained by the relatively small size of the site, along with the fact that it is almost entirely forested. The proposed dwelling, driveway and yard have a similar footprint when compared to other developed, residential lots in the neighborhood. After consideration of the side setbacks, setback from the road, and the required minimum 35-foot setback from the Critical Area Easement (CAE) for a reasonably sized rear yard, the design proposal shown on the plan submitted with this variance request results in the least impacts to the forest to be retained (CAE). Literal enforcement of the regulations would constitute an unwarranted hardship. Therefore, the first criterion has been met.

The second criterion requires that a literal enforcement of the regulations would deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area. If there were literal enforcement of the regulations, the applicant would be deprived of the ability to construct a reasonably-sized dwelling on the property and the use of a practical yard and other, ordinary residential uses, all of which are enjoyed on similar properties in the area. Therefore, the second criterion has been met.

The third criterion requires that granting of a variance will not confer upon an applicant any special privilege that would be denied to other lands or structures within the Critical Area. The construction of the dwelling and the associated residential features within the Critical Area on a similar property with similar constraints would not be denied, if all other criteria for a Critical Area Variance were met. Therefore, the third criterion has been met.

The fourth criterion requires that a variance is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property. Site work or construction has not started on the property, and the applicant is not requesting this variance due to conditions on neighboring properties. Therefore, the fourth criterion has been met.

The fifth criterion requires that granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area regulations. The construction of the dwelling will have no direct impacts to tidal waters, tidal wetlands, non-tidal wetlands or tributary streams (fish habitat) since no activities are proposed in these resources. Adverse impacts to wildlife or plant habitat will be minimized and mitigated by the recordation of a Critical Areas Easement (in

perpetuity) on site, along with the associated Declaration of Protective Covenants, on site planting and the payment of a fee-in-lieu of planting, all as stipulated below. Granting of this variance will be in harmony with the spirit and intent of the Critical Area Regulations. Therefore, the fifth criterion can be met with mitigation.

Based upon our review, this Department finds that the first four of the above criteria have been met, and that the fifth criterion can be met by the full implementation of and approved Critical Area Management Plan and recordation of the Critical Area Easement along with the associated Declaration of Protective Covenants. Therefore, the requested variance is hereby approved in accordance with Section 33-2-205 of the Baltimore County Code with the following conditions:

1. Mitigation for 8,226 square feet of forest clearing (greater than 30%) shall be provided, in part, by on site planting for 900 sf of credit, per COMAR 27.01.09.01-2 Table L, and by the payment of a fee-in-lieu of planting at a rate of \$1.50 per sf for the remaining 7,326 sf of clearing (\$10,989.00). This shall be accomplished in accordance with an approved Critical Area Management Plan, per COMAR 27.01.09.01, which must be approved prior to the issuance of any permit. All fees-in-lieu must be received by this Department prior to the issuance of any permit. Mitigation planting must be completed prior to approval of a Use & Occupancy Certificate.
2. The Critical Area Management Plan must include permanent "Critical Area Easement-Do Not Disturb" signage posted along the Critical Area Easement boundary in the rear yard in approved locations, and a planting cost estimate, specified below.
3. A Critical Area Buffer Management Plan performance security, via an Environmental Agreement for mitigation planting shall be posted prior to the issuance of any permit. The Security amount shall be based on 110% of an approved cost estimate, including materials and labor for installation of the plants, mulch, etc., and be no less than \$0.25 per square foot.
4. The CAE, comprising approximately 7,900 square feet, shall be recorded, via the Exhibit A process, in the Baltimore County Land Records along with a Declaration of Protective Covenants that restrict use and disturbance of the area. The recordation must be completed prior to approval of any permit.
5. Add the following note to all plans for this project, including the Critical Area Management Plan: "A Critical Area Variance was granted by the Baltimore County

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Critical Area Administrative Variance  
DEPS Tracking #07-18-2771  
October 11, 2018  
Page 4

Department of Environmental Protection and Sustainability from the Baltimore County Code, Article 33, Environmental Protection and Sustainability, Title 2, Chesapeake Bay Critical Areas Protection for the purposes of clearing 8,226 square feet (greater than 30%) of forest for the construction of a single-family dwelling, driveway and associated yard. Variance approval conditions include the recordation of a Critical Area Easement, on site mitigation planting, installation of permanent Critical Area Easement-Do Not Disturb signs, the payment of a fee-in-lieu of planting, and posting of a planting performance security via an Environmental Agreement, as mitigation. These conditions were placed on this variance to reduce water quality impacts.”

It is the intent of this Department to approve this variance subject to the above conditions. Changes in site layout may require submittal of revised plans and an amended variance request. Please be advised that Baltimore County may not issue a permit for the activity that was the subject of the variance application until 30 days after variance approval, pursuant to Natural Resources Article, Section 8-1808 (d))6(ii).

Please have the property owner(s) sign the statement on the following page, and return the original copy of this letter to this Department. Failure to return a signed copy of this letter may result in delays in processing of permits or other development plans for the subject property, and/or may render this variance null and void.

If you have questions regarding this project, please contact Thomas Panzarella at 410-887-3980.

Sincerely,

David V. Lykens  
Deputy Director

DVL:tcp  
c: Ms. M. Claudia Jones, Critical Area Commission

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Critical Area Administrative Variance  
DEPS Tracking #07-18-2771  
October 11, 2018  
Page 5

I/We have read and agree to implement the above requirements to bring my/our property,  
located at 8918 Millers Island Boulevard, into compliance with the Chesapeake Bay  
Critical Area regulations.

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Property Owner(s) Signature(s) (All Owners Must Sign)	Date
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Printed Name(s) of Owner(s)	Date
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